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In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 546

MARIO MERCADO E HIJOS,
Petitioner,

v.

MANUEL FRANCISCO LLUBERAS PASARELL ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

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MARIO MERCADO E HIJOS,
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PASARELL ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

COMES NOW PETITIONER, Mario Mercado e Hijos, a civil law partnership organized under the laws of Puerto Rico with domicile at the City of Ponce, Puerto Rico, through its undersigned attorneys and respectfully states to this Honorable Court:

This is a Petition to review a judgment of the United States Court of Appeals, for the First Circuit entered on August 3, 1955 (R. 91) and a Judgment on Reconsideration entered by the same court on September 12, 1955 (R. 96-

100) dismissing without a hearing under Rule 39 of that Court an appeal taken by the Petitioner from the Supreme Court of Puerto Rico.

Jurisdiction of this Court is invoked under U.S.C.A. Title 28, Section 1254 and Rules 19 and 21 of this Honorable Court; and Section 864, Title 48 U.S.C.A.

On January 12, 1955 Mario Mercado e Hijos filed its Notice of Appeal (R. 68) to the United States Circuit Court of Appeals for the First Circuit and on the same date filed the Statement of Points on Appeal (R. 69-73). On February 15, 1955 a Supersedeas Bond in the amount of $52,000.00 (R. 74) was given by Mario Mercado e Hijos as principal and the Great American Indemnity Company as surety, which was approved by the Chief Justice of the Supreme Court of Puerto Rico. On July 8, 1955 petitioner filed its Statement on Appeal (R. 74-89) before the United States Court of Appeals for the First Circuit, under Rule 39 of that Court. In that Statement on Appeal *errors of local law* and *due process of law* were raised. The appellee filed a Motion to Dismiss or Affirm on July 8, 1955 (R. 90-91) and on August 3, 1955 the United States Court of Appeals entered a judgment dismissing the appeal summarily (R. 91). On August 9, 1955 the petitioner Mario Mercado e Hijos filed a Motion for Reconsideration (R. 92) in which it stated that the present case could not be dismissed without a hearing under Rule 39, and denying that it had submitted its case on the record filed and the Statement of Appeal. It was also alleged in the Motion for Reconsideration that Rule 39 of the United States Court applied only to cases involving questions of local law but that when questions of due process, and local law were raised the appellant was entitled to a hearing on the merits. It was also stated that there was a complete absence of evidence to support the findings in the case. On September 12, 1955 (R. 96-100) the United States Court of Appeals rendered

an Opinion by Mr. Woodbury, Circuit Judge, and a judgment denying the Motion for Reconsideration.

Main Questions Raised by the Petitioner

The main question raised by this Petition is the right or power of the First Circuit to discriminate against appeals from Puerto Rico under rule 39 (b); or to establish by rules differences between appeals from the Supreme Court of Puerto Rico and United States courts without express authority of Congress to that effect, or when Congress expressly provides otherwise.

Petitioner's contention is that under the law as it now stands, litigants in the Supreme Court of Puerto Rico can bring their cases to the First Circuit *as a matter of right, De Castro* v. *Board of Commissioners,* 136 F.2d 419 at page 425 middle, and that the United States Court of Appeals must hear those appeals, any rule to the contrary notwithstanding or being null and void.

In weighing the value of this Certiorari for this case and for the purpose of establishing the regular judicial proceedings in the U. S. Court of Appeals for the First Circuit as to appeals from the Supreme Court of Puetro Rico we have to consider and value three main legal pronouncements.

Legal Pronouncements To Be Considered In This Certiorari

1. Rule 39 (b) of the First Circuit which is the one involved reads as follows:

> "In appeals from the Supreme Court of Puerto Rico *involving only questions of local law the appellant shall be required to show in his statement on appeal*

that the judgment appealed from is "inescapably wrong" or "patently erroneous".[1] *Sancho Bonet* v. *Texas Co.*, 308 U.S. 463, 60 S.Ct. 349, 84 L.Ed. 401 (1940); *De Castro* v. *Board of Commissioners,* 322 U.S. 451, 64 S.Ct. 1121, 88 L.Ed. 1384 (1944). The court will entertain a motion by the appellee to affirm on the ground that it is manifest from the record and the statement on appeal that the judgment below was neither "inescapably wrong" nor "patently erroneous" and consequently should not be disturbed by this court. Such motion, which may be united in the alternative with a motion to dismiss the appeal may be filed within ten days after the filing and serving of the statement on appeal. A brief in support thereof may be filed with the motion. Five copies of such motion and brief, if any, shall be required for filing with proof of service of one copy thereof upon opposing counsel.

The court may, however, upon its own motion, dismiss the appeal or affirm the judgment appealed from where the law and justice of the case so require; or, if the case is of such character as not to justify extended argument, the court may order the cause set down for immediate hearing." (Emphasis supplied).

2. The provisions of the Judicial Code of the United States authorizing appeals from the Supreme Court of Puerto Rico to the Circuit Court of Appeals, 28 U.S.C.A. 1293.

Section 1293 U.S.C.A., Title 28, p. 423, provides:

"Final decisions of Puerto Rico and Hawaii Supreme Courts:

[1] No such requirement is made by the Act of Congress authorizing the appeal.

> The courts of appeals for the First and Ninth Circuit shall have jurisdiction on appeals *from all final decisions of the Supreme Court of Puerto Rico* and Hawaii, respectively in all cases involving the Constitution, laws or treaties of the United States or any authority exercised thereunder, *in all Habeas Corpus proceedings, and in all other civil cases where the value in controversy exceeds $5,000* exclusive of interest and costs." 62 Stat. 929. (Emphasis supplied).

It seems plain from the above quoted statute of Congress that Congress authorizes appeals on local as well as on Federal questions. The only requisite when local questions are involved is the jurisdictional amount in the sum of five thousand dollars.

As can be easily seen from the above statutes, Congress, which is the main authority over Puerto Rico (Constitution of the United States, art. 4, sec. 3 *infra*) authorizes appeals from the Supreme Court of Puerto Rico to the Circuit Court:

A) In all cases involving the Constitution, laws or Treaties of the United States or any authority exercised thereunder.
B) In all Habeas Corpus proceedings; and
C) In all other civil cases where the value in controversy exceeds $5,000, exclusive of interest and cost.

See article 4, Section 3 of the Constitution of the U. S. where it provides:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States; and nothing in this Constitution shall be so

construed as to prejudice any claims of the United States, or of any particular State."

3. The doctrine of this Supreme Court of the United States in *De Castro* v. *Board of Commissioners*, 322 U.S. 451 at page 458 where it states as follows:

> "Thus interpreted and read in its context the principle, as restated in the *Sancho Bonet* case, that to justify reversal by the federal courts of a decision of an insular supreme court in a matter of local concern, the error must be clear or manifest; the interpretation must be "inescapably wrong", it's not a mere mechanical device which requires or admits, *save in exceptional cases, of the summary disposition of appeals from that court.* Nor does it minimize the importance or dignity of the appellate function in such cases. *On the contrary, we think that it imposes on the court of appeals and on this court the peculiarly delicate task of examining and appraising the local law in its setting, with the sympathetic disposition to safeguard in matters of local concern the adaptability of the law to local practices and needs.* It is one which ordinarily cannot be performed summarily or without full argument and examination of the legal questions involved." (Emphasis supplied). See also *Mercado* v. *Commins*, 322 U.S. 466, 88 L.Ed. 1396.

From the above quotation it seems patent that this Hon. Supreme Court of the United States considered the procedure under Rule 39 not proper and that this court tried to correct it by ordering the Circuit Court to abide by the law of Congress and to stop misapplying the legal concept and procedure of affirming all local decisions in matters

of local law, without affording the parties a full hearing on the merits and appraising the local law in its setting.

On Motion to Dismiss filed by appellees under Rule 39(b) and without giving appellant the benefit of a full hearing on the merits, the Circuit Court, in the case now under consideration, ruled as follows:

> "This cause was submitted on the record on appeal from the Supreme Court of Puerto Rico, appellant's statement on appeal, appellees' motion to affirm or dismiss under Rule 39(b) with brief in support thereof. Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The Judgment of the Supreme Court of Puerto Rico is affirmed."

Appellant filed a motion for Reconsideration before the U. S. Court of Appeals which was denied. The Circuit Court instead of giving appellant the benefit of a full hearing as required by law (*De Castro* Case, *supra*), proceeded then to write a short opinion containing conclusions and explicitly criticising appellant for exercising its rights and paying no attention to statutory rights granted to the appellant by a Federal statute approved by the Supreme authority over Puerto Rico, the United States Congress.

The procedure established by Rule 39 of the Court of Appeals provides what amounts to an unauthorized segregation of appeals in that court. Appeals from the Supreme Court of Puerto Rico are treated in a different manner from those of other States and Territories of the United States. The lower court implicitly alters or modifies the procedure established by law, which procedure was fully ratified in 1950 by Congress in Section 864, 48 U.S.C.A. (Sec. 4, 64 Stat. 319) when it provided:

> "The laws of the United States relating to appeals, Certiorari, removal of causes, and other materials or proceedings, as between the Courts of the United States and the Courts of several states shall govern in such matters as between the U. S. District Court for the District of Puerto Rico and the Courts of Puerto Rico."

Section 1293 of Title 28 U.S.C.A. establishes the right of appeal from final decisions of the Supreme Court of Puerto Rico in civil cases where the value in controversy exceeds $5,000.00 exclusive of interest and cost. Thus, it is obviously clear that the appellant herein has a statutory right of appeal to the United States Court of Appeals, which statutory right cannot be overlooked or set aside by a rule of that court. Even under the present political form of government established in Puerto Rico by Public Law 600 (Title 48 U.S.C.A.) 64 Stat. 319 Act of July 3, 1950 the procedure for judicial review remained the same as prior to the enactment of such Public Law No. 600 (Title 48 U.S.C.A.).

By the provisions of that same law, Congress deemed it advisable to continue that same procedure even though under the said public law it was allowing the people of Puerto Rico full control over matters of local government.

It is clear that as far as judicial procedure is concerned it has always been the intention of Congress that all cases appealed from the Supreme Court of Puerto Rico of relative importance be reviewed by the United States Court of Appeals. The only limitation to this judicial review as has been stated *supra,* is the limitation of the jurisdictional amount of $5,000.00.

Statement of the Case

On June, 1951 the Superior Court of Puerto Rico, Ponce Section entered a judgment (R. 1-19) in the case of *Manuel Francisco Lluberas* v. *Mario Mercado e Hijos* ordering the defendant Mario e Hijos to pay to the plaintiffs the amount of $41,345.50 representing the estimated value of fruits that were produced or that could have been produced in a farm property of the plaintiffs, which was alleged to be illegally possessed by the defendant. On appeal to the Supreme Court of Puerto Rico, that Court reversed the judgment of the Ponce Court (R. 37) because the Judge of that Court had used evidence not in the record to arrive at the sum awarded. On remand the Ponce Court without hearing any additional evidence, rendered an opinion and judgment (R. 37-52) which cent by cent was identical to the original judgment that was reversed by the Supreme Court of Puerto Rico. The defendant appealed to the Supreme Court of Puerto Rico and alleged that the lower court had not followed the Mandate of the Supreme Court of Puerto Rico and that in spite of the fact that the judge stated that there was evidence in the Record to support his findings, the real fact was that necessarily he must have made reference to the evidence that was excluded by the mandate in order to arrive at exactly the same figures. This point was clearly brought to and demonstrated to the Supreme Court of Puerto Rico; both on the appeal, and in the brief filed. The Supreme Court of Puerto Rico affirmed the judgment of the lower court stating that there was sufficient evidence to support the finding aside from the excluded evidence (R. 56). The defendant filed a motion for reconsideration (R. 57-67) which was denied and therefore it took an appeal to the United States Court of Appeals for the First Circuit (R. 68). It is very important to point out at this stage that if there was enough evidence in the record to support

the findings, as the lower court did not hear any additional evidence, the Supreme Court of Puerto Rico when the case was first appealed to it, instead of reversing should have affirmed the judgment; but on the contrary, it reversed, because it found that the judgment of the lower court had been based on evidence not admitted.

It only shows that the Supreme Court of Puerto Rico examined very carefully the case on the first appeal taken; but in the second appeal, it completely overlooked and gave scarce if any attention to the record. Petitioner in this case, in its Motion for Reconsideration before the Supreme Court of Puerto Rico very clearly pointed out to that court that there was complete absence of evidence in the record to support the second judgment. It brought to the attention of that court the fact that in its first judgment the Ponce Court had given no credit to the testimony of Mr. Domingo Gilormini, who is the expert on whose testimony the second award is based.

The defendant appellant alleged before the Supreme Court of Puerto Rico and before the U. S. Court of Appeals for the First Circuit that such procedure deprived appellant of the due process of law and that the judgment awarded was obviously erroneous and inescapably wrong.

The United States Court of Appeals in a case of the importance of this one, because of the amount involved and the questions presented should have allowed a hearing on the merits and not dispose of the case summarily under Rule 39.

In its judgment without a hearing of September 12, 1955 the United States Court of Appeals for the First Circuit states:

> "The federal question asserted is a deprivation of due process of law as guaranteed by the Fifth (or Fourteenth) Amendment. It is said that the identity to a

cent of the two awards of damages indicates unmistakably that the Superior Court of Puerto Rico, Ponce Section, in spite of what it said, must necessarily have rested its second award of damages upon the same invalid ground upon which it rested its first award, i.e. the document not introduced in evidence. Wherefore, the argument runs, the Supreme Court of Puerto Rico by affirming the second award permitted a judgment to stand even though it did not rest upon evidence in the record which, the appellant says, is arbitrary and capricious and constitutes a deprivation of due process of law.

This federal question was not presented to the Supreme Court of Puerto Rico in any way, shape or manner, although it undoubtedly might have been. Therefore, under the decisions of this court that question is not before us and cannot be relied upon as a basis for our appellate jurisdiction. *Ramos* v. *Leahy*, 111 F.2d 955 (1st Cir. 1940); *Romero* v. *People of Puerto Rico*, 182 F.2d 864, (1st. Cir. 1950); *Prensa Insular de Puerto Rico* v. *People of Puerto Rico*, 189 F.2d 1019 (1st Cir. 1951); *Corretjer* v. *People of Puerto Rico*, 194 F.2d 527 (1st Cir. 1952). Thus our appellate jurisdiction can only rest upon the ground that this is a civil case involving the requisite amount in controversy, and in this situation, only local law being involved, the appellant under our Rule 39(b) must show in the statement on appeal required by that rule that the judgment appealed from is "inescapably wrong" or "patently erroneous". *Sancho Bonet* v. *Texas Co.*, 308 U.S. 463 (1940); *De Castro* v. *Board of Commissioners*, 322 U.S. 451 (1944). We think this requirement has not been fulfilled."

The U. S. Court of Appeals even though it recognizes that there is a federal question involved in the case, arbitrarily limits it to a question of local law and dismisses it, because the appellant has failed to show in its statement on appeal that the judgment appealed from is "inescapably wrong" or "patently erroneous". The appellant did show to the best of its knowledge the wrongness of the judgment, but even so, the only way in which a court can determine whether the judgment was inescapably wrong is by looking into the record of the proceedings had in the lower court after a hearing on the merits. Such an attitude on the part of the Court of Appeals is a complete denial of the right to appeal granted by the Federal Statute. Under appellate procedure the appellant has a right to file a brief and to have a hearing during which it can argue its case. The brief is the means through which the appellant can clearly show the errors complained of. The court has the duty to pierce and investigate carefully the record of the proceedings had in the Supreme Court of Puerto Rico.

There is a big difference between affirming a judgment after a hearing and determining that no errors of local law are involved and dismissing a case summarily and not allowing the appellant the opportunity to prove its allegations. This Honorable Court in *De Castro* v. *Board of Commissioners*, 322 U.S. 457 set out the procedure to be followed under Rule 39 (*supra*).

It is clear that both under the Federal statutes and the doctrine of this Honorable Court, the petitioner is entitled to a hearing in this case.

WHEREFORE it is respectfully requested from this Honorable Court that the petition be granted and to issue the Writ of Certiorari applied for, or in the alternative a Writ of Mandamus, to the U. S. Court of Appeals for the First

Circuit and that upon a hearing the judgment of the Supreme Court of Puerto Rico be reversed.

Respectfully submitted,

(s) PEDRO M. PORRATA
PEDRO M. PORRATA
CHARLES CUPRILL
Attorneys for petitioner,
Mario Mercado e Hijos
P. O. Box 1224
Concordia esq. Luna, Ponce, P. R.

I, Pedro M. Porrata, one of the attorneys for Petitioner Mario Mercado e Hijos do hereby Certify: That on this date, November 9, 1955 I deposited in the Post Office of Ponce, Puerto Rico an envelope duly postaged, certified, return receipt requested, addressed to Attorney Leopoldo Tormes, Attorney for respondents herein, to his address at Castillo St. #15, Ponce, Puerto Rico containing said envelope a true and exact copy of this Petition and appended documents and or papers. That there exist in this city of Ponce, P. R. a regular and daily mail service maintained by the Federal Government.

Ponce, Puerto Rico, this 9th day of Nov. 1955.

(s) PEDRO M. PORRATA
PEDRO M. PORRATA

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

No. 5015.

MARIO MERCADO E HIJOS,
Defendant, Appellant,

v.

MANUEL FRANCISCO LLUBERAS PASARELL ET AL.,
Plaintiffs, Appellees.

ORDER OF COURT.

October 31, 1955.

Upon motion of appellant, it is ordered that the orde of this Court of September 16, 1955, staying mandate herei upon the condition that a petition for a writ of certiorar be filed on November 15, 1955, be, and the same hereby is amended by substituting "December 1, 1955" for "Novem ber 15, 1955".

By the Court:

(s) ROGER A. STINCHFIELD, *Clerk*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 546

MARIO MERCADO E HIJOS,

Petitioner,

vs.

MANUEL FRANCISCO LLUBERAS PASARELL, ET ALS.,

Respondents

SUGGESTIONS OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI, AND BRIEF IN SUPPORT OF SUGGESTIONS.

LEOPOLDO TORMES GARCIA,
Attorney for Respondents,
Manuel Francisco Lluberas, et als.,
Box 1204, Ponce, P. R.

SUPREME COURT OF THE UNITED STATES

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SUGGESTIONS OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI, AND BRIEF IN SUPPORT OF SUGGESTIONS.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Introductory

Manuel Francisco Lluberas and his wife Hazel Kelly Lluberas, both deceased, (now their heirs), Antonia Lluberas Pasarell, Rosa Elena Lluberas Pasarell, Graciela Lluberas Pasarell and her husband Antonio Valenti Maestre, Celia Lluberas Pasarell and her husband Emilo Blasini Totti, and Raquel Lluberas Pasarell, respondents, hereby make opposition to the petition of Mario Mercado e Hijos, a partnership, for a writ of certiorari to review the judgment rendered by the Circuit Court of Appeals for the First

Circuit on August 3, 1955 (R 91) dismissing the appeal taken by said partnership from the judgment of the Supreme Court of Puerto Rico rendered on November 24, 1954 (R 56) affirming the judgment of the Superior Court of Puerto Rico, Ponce Section, of March 31, 1954, (R 51).

(1) Because the referred to judgment is correct, it being supported by the oral and documentary evidence in the case as weighed by the Superior Court of Puerto Rico, Ponce Section.

(2) Because the law was correctly applied.

(3) Because the appeals so taken were frivolous, and

(4) Because Rule 39 of the United States Court of Appeals for the First Circuit was correctly interpreted and properly applied, under the circumstances of the case, and

(5) Because petitioner has not placed this Court in a position to exercise its discretion in granting the remedy sought, as petitioner's record before this Court is incomplete.

Jurisdiction

The jurisdiction invoked by petitioner is under Title 28, U.S.C., section 1254, and Rules 19 and 21 of this Hon. Court; and Section 864, Title 48 USCA.

Antecedents

The history and antecedents of this litigation appear from the records of this Court in Case No. 497, October 1943, reported in *Mercado* v. *Lluberas,* 322 U. S. 465.

In going over this case, this Court will find that the partnership Mario Mercado e Hijos has been unlawfully withholding or detaining possession in bad faith, without any right or title to it whatsoever, of the farm "Indios", the

property of the brothers Lluberas-Pasarell, located in the Municipality of Guayanilla, P. R. and dedicated to the cultivation of sugar cane and pasture land, and has been collecting all the fruits produced by said farm from 1937 to November 1945, in which month the mandate of this Honorable Court was received in Puerto Rico and the present action was brought in the former District Court of Ponce, P. R.

By the use of dilatory tactics, the partnership Mario Mercado e Hijos has delayed and is still delaying, through allegations contrary to law, the execution of the judgment which the Superior Court of P. R., Ponce Section, rendered on March 31, 1954 (R 51).

This Court will find as well, that the same question as to Rule 39 of the Court of Appeals for the First Circuit now being raised by the partnership Mario Mercado e Hijos in its petition, was also raised by said partnership in the case of *Mario Mercado e Hijos* v. *Olivieri,* 322 U. S. 465 using then the same tactics and arguments now used, and that petitioner's contention was dismissed by this Honorable Court.

We anticipate that the judgment sought now to be reviewed was rendered by the Superior Court of Puerto Rico, Ponce Section, after it had weighed all the evidence adduced by the parties at the trial and after it had decided in favor of the plaintiffs—respondents herein—the conflicts in the testimony of the witnesses of both parties to the suit. (Rec. page 37-51).

The general doctrine is that a judgment will not be reversed by an appellate court unless passion, partiality or prejudice is shown, or harmful errors of procedure have been committed. No such passion, partiality, prejudice or harmful error have been alleged or shown. The errors assigned by the petitioner are imaginary and do not exist.

The petitioner questions the manner in which the Circuit

Court of Appeals for the First Circuit has applied the provisions of its Rule 39. Invoking the case of *De Castro* v. *Board of Commissioners,* 322 U. S. 451 (1944), petitioner contends that the injunction placed upon said Court has been disobeyed. We contend to the contrary that, in rendering judgment in the case, the Circuit Court of Appeals did not abdicate its appellate function. It rather followed the principle laid down by this Court in the Castro case. Since 1874 to this date, this Court has manifested its general unwillingness to overrule local tribunals upon matters of purely local concern. *Sweene* v. *Lomme,* 22 Wall 208, 213, *Northern Pacific R. R. Co.* v. *Hambly,* 154 U. S. 349, 361, *Fox* v. *Haarstick,* 156 U. S. 674, 679, *Armijo* v. *Armijo,* 181 U. S. 558, 560-561, *Copper Queen Consol. Min. Co.* v. *Territorial Board of Equalization,* 206 U. S. 474, 479, *Lewis* v. *Harrea,* 208 U. S. 309, 314, *English* v. *Arizona,* 214 U. S. 359, 361, *Santa Fe County* v. *New Mexico,* 215 U. S. 296, 305, *Albright* v. *Sandoval,* 216 U. S. 331, 339, *Lewers & Cooke* v. *Atcherly,* 222 U. S. 285, 294, *Treat* v. *Grand Canyon R. R. Co.,* 222 U. S. 448, 452, *Ker & Co.* v. *Couden,* 223 U. S. 268, 279, *Clason* v. *Matko,* 223 U. S. 646, 653, *Gray* v. *Taylor,* 227 U. S. 51, 57, *Cordova* v. *Folgueras,* 227 U. S. 375, 378-379, *Phoenix R. R. Co.* v. *Landis,* 231 U. S. 578, 579-580, *Santa Fe C. R. Co.* v. *Friday,* 232 U. S. 694, 700, *Nadal* v. *May,* 233 U. S. 447, 454, *Villanueva* v. *Villanueva,* 239 U. S. 293, 298-299, *Diaz* v. *Gonzalez,* 261 U. S. 102, 105-106, *Fernandez* v. *Ayllon,* 266 U. S. 144, 146, *Matos* v. *Alonso Hermanos,* 300 U. S. 429, 432, *Waialua Co.* v. *Christian,* 305 U. S. 91, 109, *Inter-Island Co.* v. *Hawaii,* 305 U. S. 306, 311, all leading up to the emphatic statement of the same rule in *Sancho Bonet, Treasurer* v. *Yabuoca Sugar Co.,* 306 U. S. 505, 509-511, and in *Sancho Bonet, Treasurer* v. *Texas Co.,* 308 U. S. 463, 470-472, and afterwards in *People of Puerto Rico* v. *Rubert Hermanos, Inc.,* 315 U. S. 637, 646.

See also the cases of *Mercado* v. *Commins,* 322 U. S. 465, *Monagas* v. *Vidal* 170 F. 2d 99 (1948) (Certiorari denied 335 U. S. 911, 69 S. Ct. 483), *Rullan* v. *Buscaglia,* 168 F. 2d 401 (1948) (Certiorari denied 335 U. S. 857), *Mercado Riera* v. *Mercado Riera,* 167 F. 2d 207 (1948) (Certiorari denied 335 U. S. 825), *United States* v. *Iriarte,* 166 F. 2d 800 (1948) (Certiorari denied 335 U. S. 816), *A. J. Tristani, Sucrs.* v. *Buscaglia,* 166 F. 2d 966 (1948) (Certiorari denied 335 U. S. 821), *Sociedad Española de Auxilio, etc.* v. *Buscaglia,* 164 F. 2d 745 (1947) (Certiorari denied 333 U. S. 867), *Anderson* v. *Mercado,* 163 F. 2d 303 (1947) (Certiorari denied 332 U. S. 837), *Buscaglia* v. *Ballester,* 162 F. 2d 805 (1947) (Certiorari denied 332 U. S. 816), *Padron* v. *People of Puerto Rico,* 142 F. 2d 508 (1944) (Certiorari denied 323 U. S. 791), *Buscaglia* v. *District Court of San Juan,* 145 F. 2d 274 (1944) (Certiorari denied 323 U. S. 793), *Ballester-Ripoll* v. *Court of Tax Appeals of Puerto Rico,* 142 F. 2d 11 (1944) (Certiorari denied 323 U. S. 723).

In *Bonet* v. *Yabucoa Sugar Co.* 306 U. S. 505, at p. 509, this Hon. Court says:

> "And this Court has declared its unwillingness to overrule Puerto Rican tribunals upon matters of purely local concern, *Nadal* v. *May,* 233 U. S. 447, 454, or to decide against the local understanding or a local matter, not believed by this Court to be clearly wrong, *Santa Fe Central Ry. Co.* v. *Friday,* 232 U. S. 694, 700, and a disposition to accept the construction placed by a local court upon a local statute, *Phoenix Ry. Co.* v. *Landis,* 231 U. S. 578, 579, and to sustain such a construction in the absence of clear or manifest error, *Villanueva* v. *Villanueva,* 239 U. S. 293, 299, *Waialua Co.* v. *Christian,* 305 U. S. 91, 109, *Inter-Island Co.* v. *Hawaii,* 305 U. S. 306, 311."

What is said above in the Bonet case clearly applies to this case.

Petitioner's argument that there is a constitutional question in the case and that the judgment of the Supreme Court of Puerto Rico deprives said petitioner of its property without due process of law, an argument which tries to bring to the consideration of this Court an invented constitutional question, has been plainly answered by the Court of Appeals for the First Circuit in its opinion denying the motion for reconsideration filed by the petitioner Mario Mercado e Hijos (R-98) and (R-99). This shows that, before it denied the motion for reconsideration, the Court of Appeals studied the record before it and was convinced that the judgment appealed from was not "inescapably wrong" or "patently erroneous".

In closing its opinion denying petitioner's motion for reconsideration, the Court of Appeals for the First Circuit said:

> "We are convinced that an appeal to this Court would only waste counsel's and our time and the parties money. See *Buscaglia* v. *Liggett & Myers Tobacco Co.*, 149 F. 2d 493, 496 (1st Cir., 1945)."

This Honorable Court does not have before it a complete record of the case to enable it to review the conclusions reached by the Court of Appeals for the First Circuit after a study of the record before it, and there is no legal ground for issuing, on petitioner's impassioned allegations, the writ of certiorari or the writ of mandamus prayed for in the petition.

Conclusion

Wherefore respondent respectfully submits that the petition for a writ of certiorari or one of mandamus, in this case be denied with costs allowed to the respondents in accordance with Rule 32 of this Court.

Ponce, Puerto Rico, Nov. 19, 1955.

—— VIVAZ,
Attorney for Respondents,
Manuel Francisco Lluberas, et als.

Served with copy At Ponce, P. R. Nov. 19, 1955.
PEDRO M. PORRATA,
One of the Attorneys for Petitioner.
By: VIRGILIO PORRATA,
Clerk.

(5669-7)